

Overview of NEPA

2.1 The Purpose of NEPA

When NEPA was signed into law in 1969, Congress and the President established a new environmental ethic for Federal agencies. This new ethic became part of each agency's mission. The act states its purposes (NEPA Section 2, 43 U.S.C. § 4321) as follows:

- *To declare a national policy which will encourage productive and enjoyable harmony between man and his environment;*
- *To promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;*
- *To enrich the understanding of the ecological systems and natural resources important to the Nation; and*
- *To establish a Council on Environmental Quality.*

NEPA states,

In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources . . . (Section 101 42 U.S.C. § 4331(b)).

In other words, Reclamation must be environmentally conscious in looking at the relationship its planning actions, projects, and programs have with the human environment now and in the future.

This act was not the first legislation to address environmental issues, but it is the most important. In order for Congress to make NEPA effective, it directed that all “*policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act*” (Section 102, 42 U.S.C. § 4332).

NEPA is a relatively short law, yet its powerful requirements have established an ethic for all Federal agencies, and the law has established the CEQ to promulgate regulations to implement the act. A copy of the act is attached to this handbook.

2.2 The Philosophy of NEPA

To the fullest extent possible, Federal agencies are required to work according to the policies set forth in NEPA and its implementing regulations. NEPA policies go beyond the action-forcing provisions of Section 102(2)(c) by requiring (in Section 101) the integration of NEPA considerations into planning and other decisionmaking processes. The act is an effort to encourage the wise use of natural resources by requiring the consideration of environmental factors in Federal agency decisionmaking and by opening that decisionmaking to the involvement and scrutiny of State and local agencies, American Indian (Indian) tribal governments and agencies, concerned and general publics, and private organizations. The intent of NEPA is to have Federal agencies consider environmental issues in all decision-making, regardless of any requirement for an environmental document.

2.3 The NEPA Process

Any Federal discretionary action raises the potential for the kind of document required by Section 102(2)(c) of NEPA. The NEPA process discussed here focuses on the various types of documents required. However, it must be remembered that the intent of NEPA is for environmental considerations to be a part of all decisionmaking.

CEQ regulations (40 CFR 1507.3) require that Federal agencies “*adopt procedures to ensure that decisions are made in accordance with the policies and purposes of the Act.*” Agencies are to designate the major decision points in their principal programs and ensure that the NEPA process corresponds with them. This process cannot be a last-minute consideration if it is to be applied appropriately. Whenever Reclamation is considering an action, the NEPA process will be integrated into all planning and decisionmaking processes from the earliest discussion of the need for and type of action to be taken.

While noncompliance or inadequate compliance with procedural regulations and requirements of the act (Section 102(2)(c)) may not cause environmental damage, an agency in a noncompliant or inadequate compliance condition may suffer very serious consequences. An agency can incur lawsuits, increased project costs,

project delays, and damage to its public image. These risks can be reduced by always planning actions with full NEPA compliance in mind. In Reclamation, NEPA compliance is the responsibility of all Reclamation employees, not just that of management or the environmental staff.

2.3.1 What NEPA Does

Compliance with NEPA is a Federal responsibility and involves the participation of Federal, State, tribal, and local agencies and concerned and affected publics in the planning process. The act requires full disclosure about major actions taken by Federal agencies and accompanying alternatives, impacts, and possible mitigation. This act also requires that environmental concerns and impacts be evaluated during planning and decisionmaking. During planning, steps can be taken to correct or mitigate the impacts of an action. However, once a project is being implemented, it is usually too late to correct errors without a substantial increase in the cost and the manageability of the project. Therefore, properly applied, NEPA results in informed and better decisions.

2.3.2 What NEPA Does Not Do

The following list is intended to dispel some of the misconceptions about NEPA. Compliance with NEPA **does not**:

- **Decide which alternative to choose.**—The process provides for the development of reasonable alternatives and evaluates their impacts so that the decisionmaker can make an informed decision.
- **Prevent environmental impacts from occurring.**—NEPA compliance requires only that impacts be disclosed before decisionmaking.
- **Guarantee wise decisions.**—NEPA compliance provides information that is used in the decisionmaking process. It cannot ensure that the people using the information will use it wisely.
- **Require an analysis of “status quo” operations at ongoing projects for environmental impacts.**—“Status quo operations” means historic operations to meet project purposes. Proposals which would result in major changes in operations

outside of the historic range, or which could have significant impacts on the environment in light of new information or circumstances, could require NEPA analysis.

- **Prohibit any actions.**—Neither the act nor its regulations prohibit the decisionmaker from taking any action following completion of NEPA requirements. Their primary requirement is full disclosure to the public and decisionmaker for review and comment and provision that actions are weighed in light of environmental concerns. Once these requirements are met, the decisionmaker is free to take action.
- **Justify a predetermined action.**—The NEPA process is intended to identify and evaluate alternatives in an impartial manner.
- **Apply to non-Federal entities.**—NEPA applies only to actions by a Federal agency.

2.4 Other Parts of NEPA (NEPA Title I, Section 101(a), (F), (G), and (H))

NEPA includes several other provisions that are rarely referenced. Section 101(a) sets forth some of the policy that should apply to all decisions made by Reclamation—not just those decisions made following the preparation of a categorical exclusion (CE), EA, or EIS:

- Paragraph (F) recognizes the worldwide and long-range character of environmental problems and authorizes Federal agencies to lend appropriate support to activities maximizing international cooperation and preventing declines in the world environment.
- Paragraph (G) authorizes Federal agencies to make assistance available to State and local governments in restoring, maintaining, and enhancing the environment.
- Paragraph (H) authorizes Federal agencies to initiate and use ecological information for the planning and development of resource-oriented projects.

2.5 Council on Environmental Quality and Environmental Protection Agency

2.5.1 Council on Environmental Quality

NEPA created CEQ in the Executive Office of the President as an advisory body. The specific functions of CEQ related to the NEPA process include:

- Promulgating regulations implementing NEPA (40 CFR Parts 1500-1508) and guidance. (See NEPA's *Forty Most Asked Questions* by CEQ, attached.)
- Overseeing Federal agency implementation of NEPA and CEQ regulations, including approving agency NEPA regulations.
- Providing assistance in developing environmental policies and proposed legislation as requested by the President.
- Interpreting NEPA and CEQ regulations for agencies and citizens.
- Providing consultation with Federal agencies regarding legislation and litigation.
- Mediating interagency disputes.
- Acting on referrals to CEQ (40 CFR Part 1504).

2.5.2 Environmental Protection Agency

The Environmental Protection Agency (EPA) has a unique responsibility with respect to reviewing the environmental effects of other Federal agencies' actions under the authority of Section 309 of the Clean Air Act (CAA). Section 309 requires EPA to review and publicly comment on the environmental impacts of any matter related to the duties, responsibilities, and authorities of EPA's administrator, including but not limited to actions to which Section 102(2)(c) of NEPA applies. EPA has developed a rating system for these reviews (figure 2.1). If EPA's administrator determines that a proposed action is unsatisfactory from the standpoint of public health, welfare, or environmental quality, Section 309 requires that the determination be made public (generally in the *Federal Register*) and referred to CEQ.

EPA's review is carried out to ensure that an independent review of the environmental effects of Federal proposals occurs. EPA's reviews emphasize consultation with the lead agency and public disclosure of EPA actions and concerns. The major elements of the Section 309 review process include:

- EPA reviews and comments on both the adequacy of the analysis and the environmental impacts of the proposed action.
- EPA comments on issues related to its "duties and responsibilities," which include all environmental media and methodologies related to media-impact assessment.
- EPA comments on potential violation of or inconsistency with national environmental standards and determines whether adequate information has been provided to assess potential environmental impacts of the proposed action.
- If the action is a Federal project to be located in a specific area, the appropriate EPA regional office has the jurisdiction and delegated responsibility for carrying out the Section 309 CAA review and working with the lead Federal agency to resolve any problems. If the action is legislative or regulatory, the Section 309 review will generally be conducted directly by EPA headquarters.
- EPA headquarters becomes involved if a region finds that the proposed action in a draft EIS is "environmentally unsatisfactory," or that the draft EIS is "inadequate" to assess the potentially significant environmental impacts of the proposed actions. EPA always notifies CEQ of a draft EIS which has been rated "unsatisfactory" or "inadequate" by EPA because such a draft is a prime candidate for referral to CEQ.
- If the region finds that the subsequent final EIS is "environmentally unsatisfactory," the region recommends to the EPA administrator that the matter be referred to CEQ for resolution. At this time, EPA headquarters becomes significantly involved in the factual determination and judgment concerning the EIS.

EPA has other NEPA-related duties. In accordance with a memorandum of agreement between EPA and CEQ, EPA carries out the operational duties associated with the administrative aspects of the EIS filing process. The Office of Federal Activities, at EPA headquarters, has been designated the official EPA recipient of all EISs prepared by Federal agencies. EPA's filing guide was published in the *Federal Register* on Tuesday, March 7, 1989 (attached).

Environmental Impact of the Action**LO — Lack of Objections**

EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC — Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO — Environmental Objections

EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU — Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to CEQ.

Adequacy of the Impact Statement**Category 1 — Adequate**

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 — Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion would be included in the final EIS.

Category 3 — Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of that action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review and, thus, should be formally revised and made available for public scoping comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to CEQ.

Figure 2.1.—Summary of rating definitions and followup action.
[From *Environmental Protection Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment*]

